

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YOKO ONO LENNON, SEAN ONO LENNON,
JULIAN LENNON, and EMI BLACKWOOD
MUSIC, INC.,

08 CV 3813 (SHS)(FM)

Plaintiffs,

-against-

PREMISE MEDIA CORPORATION, L.P., C&S
PRODUCTION L.P. *d/b/a* RAMPANT FILMS,
PREMISE MEDIA DISTRIBUTION L.P. AND
ROCKY MONTAIN PICTURES, INC.,

Defendants.

-----X

DECLARATION OF PETER S. SHUKAT

Peter S. Shukat , an attorney duly admitted to practice law by and
before this Court and the Courts of the State of New York hereby declares,
pursuant to 28 U.S.C. § 1746, under penalties of perjury, as follows:

1. I am a member of the firm of Shukat Arrow Hafer Weber &
Herbsman, LLP, attorneys for the Plaintiffs in this action and I am
submitting this affirmation in support of Plaintiffs' request for a voluntary
dismissal, with prejudice, and without costs and attorneys fees. Plaintiffs also
seek return of the bond which was posted by them on May 20, 2008.

2. A temporary restraining order in the State Court Action had been in place until mid-August which prevented the release of “Expelled: No Intelligence Allowed” (the “Film”).¹ On August 13, Judge Lowe, in the State Court action, denied Plaintiff EMI Records request for a preliminary injunction.

3. Plaintiff’s primary motivation for the litigation (as fully briefed in Plaintiffs’ application for a preliminary injunction) was to prevent the Film from being distributed in a version which contained the John Lennon song “Imagine”. In view of the fact that the Film is now being released on DVD, the threshold reason for commencing this Action has become moot. (See Amazon.com print out showing pre-order and shipping date for the Film, annexed hereto as Exhibit A).

4. Based on the imminent release of the DVD, on August 27, 2008, Plaintiffs withdrew their appeal in the Second Circuit. No appendix or memorandum of law was filed by Plaintiffs.

5. Shortly thereafter, I called both Roy Hardin, Esq. and Anthony Falzone, Esq., attorneys for the defendants herein, in a good faith effort to resolve this litigation by a Stipulation to Dismiss the Action. Mr. Falzone

¹ EMI Records Limited and Capitol Records LLC v. Premise Media Corporation, L.P., C&S Production L.P. d/b/a Rampant Films, Premise Media Distribution L.P. and Rocky Mountain Pictures, Inc., Case No. 601209/08.

advised me that he would not simply walk away without a “substantial” payment from the Plaintiffs for damages, costs and attorneys fees.

6. As set forth in the accompanying Memorandum of Law, we believe that our clients’ position has merit and we continue to believe that the use of John Lennon’s song, “Imagine”, was not a fair use.

7. However, in view of the fact that the Film is now being released on DVD, in view of your Honor’s decision, as well as the substantial time and effort which will be involved in discovery (particularly dealing with issues which arose in the 1960’s), depositions of numerous witnesses in multiple jurisdictions, motion practice and a potential jury trial, our clients have decided to withdraw the action.²

8. It is unfortunate that the Defendants have chosen to continue in their quest to exploit this matter for publicity purposes and press for hundreds of thousands of dollars in fees. The Defendants still trumpet that Mrs. Lennon attempted to keep people “from watching our film”. (See annexed article, “Anti-Evolution film ‘Expelled’ to Be Re-Released Following Court Victory over Yoko Ono.” (Annexed hereto as Exhibit B.)

9. Simply, the Plaintiffs do not wish to continue to lend any more publicity to a Film for which they would not have granted a license - a Film

² Although pursuing the damage claim was important, it is clear that the amount of time and energy involved with the accounting issues in this litigation would be enormous. Moreover, based on the Films limited release, the production costs they claim they incurred, it is clear that the Film is not going to have substantial, if any, profits.

the New York Times said was: "One of the sleaziest documentaries to arrive in a very long time, "Expelled" No Intelligence Allowed" is a conspiracy-theory rant masquerading as investigative inquiry." (A copy of the review is annexed hereto as Exhibit C).

10. While the Fair Use Project, through Mr. Falzone, wishes to make cases such as these cause célèbre, to expand fair use, for the Plaintiffs it is a very real issue of attempting to protect valuable copyrights in the current climate which is eviscerating those rights.

11. Mrs. Lennon and EMI felt, and feel, very strongly that this Film, which licensed each and every other musical composition other than "Imagine", did so for the purpose of exploiting and capitalizing on the name and fame of the late John Lennon.

12. Although Plaintiffs fought hard both in this action, and in cooperation with Capital Records in the State Court action, in view of this Court's decision and Judge Lowe's decision, they do not wish to press on to a pyrrhic victory or indeed, continue to feed the cause of the Defendants and Mr. Falzone's crusade.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE
FOREGOING IS TRUE AND CORRECT.

Dated: New York, New York
September 5, 2008

A handwritten signature in purple ink, appearing to read "Peter S. Shukat", is written over a horizontal line.

Peter S. Shukat

Exhibit A

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Edition

Any Edition

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Language

Any Original Language

English

Decade

Any Decade

2000 & Newer

MPAA Rating

Any Rating

Unrated

PG

Region

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Condition

Any Condition

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DVD > "expelled the movie"

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1.



Expelled: No Intelligence Allowed ~ Ben Stein, Richard Dawkins, Christopher Hitchens, and Richard Sternberg (DVD - 2008)

Available for \$29.95. This item will be released on Oct 21, 2008.
Eligible for **FREE** Super Saver Shipping.

★★★★★ (187)

2.



Expelled: No Intelligence Allowed [Blu-ray] ~ Ben Stein, Richard Dawkins, Christopher Hitchens, and Richard Sternberg (Blu-ray - 2008)

Available for \$29.95. This item will be released on Oct 21, 2008.
Eligible for **FREE** Super Saver Shipping.

★★★★★ (9)

3.



Darwin's Nightmare (DVD - 2007)

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The Case for a Creator ~ Lee Strobel (DVD - 2006)

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Exhibit B



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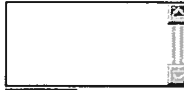
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Anti-Evolution film 'Expelled' to Be Re-Released Following Court Victory Over Yoko Ono

Friday, July 18, 2008
FOX NEWS

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The controversial film "Expelled: No Intelligence Allowed" will be re-released theatrically this summer across the United States to celebrate the film's legal victory over Yoko Ono, according to the documentary's producers.

In June, Ono lost her Manhattan legal battle to block the use of John Lennon's song "Imagine" in the film, which challenges the theory of evolution. Ono, Lennon's widow, argued that the makers of "Expelled" used parts of the song without her permission.

"Expelled," which stars author/actor/economist Ben Stein and presents a sympathetic view of intelligent design, the theory that the universe is too complex to be explained by evolution alone, debuted at No. 10 at the box office in

April, but saw its theatrical run marred by the Ono lawsuit, according to the film's producers.

"We had many individuals and groups who had planned to see the film, but decided not to because the cloud of doubt this lawsuit brought to the film," noted one of the film's producers, John Sullivan.

"We came out of the gate with strong momentum only to have our integrity questioned by this frivolous lawsuit. While we're thrilled with the film's having earned nearly \$8 million during its first run; we've heard from enough people and groups who want to see it in their theaters that we've agreed to re-release it this time without an undeserved cloud over its head."

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On May 19, the parties agreed to a voluntary temporary restraining order while they awaited Manhattan U.S. District Court Judge Sydney H. Stein's ruling on Ono's motion to enjoin the showing and distribution of the film. The restraining order prevented the producers from making additional copies of the film for distribution.

However, on June 2, Stein denied the injunction and noted that Premise Media was likely to succeed on its fair use defense.

"I'm not related to Judge Stein in any way," noted Ben Stein, "but we are related in this sense: we are both fans of the First Amendment and I am grateful that the legal system set aside this attempt to shut our film up."

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"We will not be silenced. In fact it will have the opposite effect: we will re-release it and allow millions of Americans to go to the box office and register their vote against Ms. Ono and her attempt to keep them from watching our film."

Working in conjunction with the film's distributor Rocky Mountain Pictures, "Expelled" will be made available to any group of 250-300 people at a cost of low as \$6 per ticket.

"We have 1,000 prints ready to be shipped out to any group that would like to bring the movie to their local theater," noted Premise's EVP-Sales Tripp Thornton.

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The New York Times
 Friday, September 5, 2008

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MOVIE REVIEW

Expelled: No Intelligence Allowed



Rocky Mountain Pictures

Ben Stein standing before a sculpture of Darwin in "Expelled."

Resentment Over Darwin Evolves Into a Documentary

By JEANNETTE CATSOULIS
Published: April 18, 2008

One of the sleaziest documentaries to arrive in a very long time, "Expelled: No Intelligence Allowed" is a conspiracy-theory rant masquerading as investigative inquiry.

More About This Movie

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Positing the theory of intelligent design as a valid scientific hypothesis, the film frames the refusal of "big science" to agree as nothing less than an assault on free speech. Interviewees, including the scientist Richard Sternberg, claim that questioning Darwinism led to their expulsion from the scientific fold (the film relies extensively on the post hoc, ergo propter hoc fallacy — after this, therefore because of this), while our genial audience surrogate, the actor and multihyphenate Ben Stein, nods sympathetically. (Mr. Stein is also a freelance columnist who writes Everybody's Business for The New York Times.)

Prominent evolutionary biologists, like the author and Oxford professor Richard Dawkins — accurately identified on screen as an "atheist" — are provided solely to construct, in cleverly edited slices, an inevitable connection between Darwinism and godlessness. Blithely ignoring the vital distinction between social and scientific Darwinism, the film

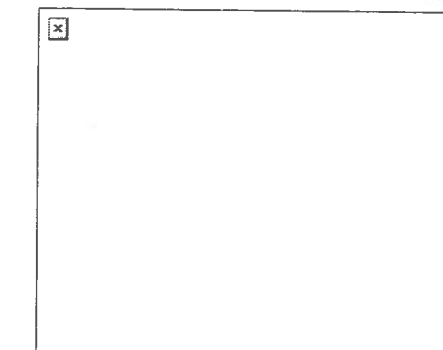
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links evolution theory to fascism (as well as abortion, euthanasia and eugenics), shamelessly invoking the Holocaust with black-and-white film of Nazi gas chambers and mass graves.

Every few minutes familiar — and ideologically unrelated — images interrupt the talking heads: a fist-shaking Nikita S. Khrushchev; Charlton Heston being subdued by a water hose in “Planet of the Apes.” This is not argument, it’s circus, a distraction from the film’s contempt for precision and intellectual rigor. This goes further than a willful misunderstanding of the scientific method. The film suggests, for example, that Dr. Sternberg lost his job at the Smithsonian’s National Museum of Natural History because of intellectual discrimination but neglects to inform us that he was actually not an employee but rather an unpaid research associate who had completed his three-year term.

Mixing physical apples and metaphysical oranges at every turn “Expelled” is an unprincipled propaganda piece that insults believers and nonbelievers alike. In its fudging, eliding and refusal to define terms, the movie proves that the only expulsion here is of reason itself.

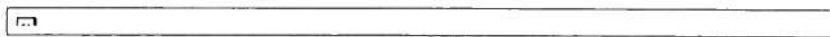
“Expelled” is rated PG (Parental guidance suggested). It has smoking guns and drunken logic.

EXPELLED

No Intelligence Allowed

Opens on Friday nationwide.

Directed by Nathan Frankowski; written by Kevin Miller and Ben Stein; narrated by Mr. Stein; director of photography, Mr. Frankowski; edited by Simon Tondeur; music by Andy Hunter and Robbie Bronnimann; produced by Logan Craft, Walt Ruloff and John Sullivan; released by Premise Media. Running time: 1 hour 30 minutes.



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